Office of Chief Counsel Internal Revenue Service

memorandum

CC:WR:NCA:SF:TL-N-612-98
JPThurston

date:	JUL 2 1 1999
to:	Assistant Chief Counsel(Field Service) CC:DOM:FS
from:	District Counsel, Northern California District, San Francisco

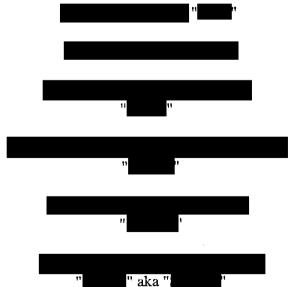
subject: Request for Post-Review of Significant Advice
Review of Loss Transaction

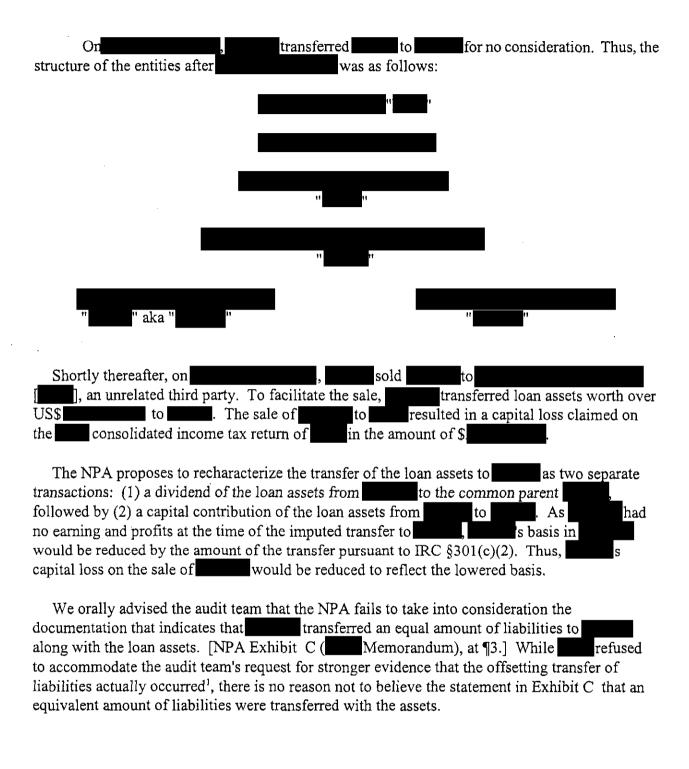
We request post-review of oral advice we offered the audit team. The audit team requested our advice on the tax consequences of an exchange of assets between related subsidiaries prior to the sale of one of the subsidiaries to a third party.

We believe this advice qualifies for post-review under CCDM (35) 3 (19) 4 (4) because the advice involves the application of well-settled principles of law to the facts.

We have attached a copy of a draft Notice of Proposed Adjustment ("NPA") prepared by the audit team setting forth facts and copies of relevant documents along with the proposed adjustment. We have been advised by the audit team that the NPA will not be issued to the taxpayer based in part on the advice we provided.

The structure of the entities involved in the transaction prior to was as follows:





According to the audit team, failed to provide the requested additional documentation on the grounds that it would be unduly burdensome to locate the documents in and that Exhibit C was sufficient evidence as the transfer of assets with offsetting liabilities is a standard banking industry practice.

[NPA Exhibit C (Memorandum), at ¶ 3]. If the transfer of loan assets occurred prior to the transfer of to to the transfer of to to the transfer of loan asset transfer even if no offsetting liabilities were transferred. Instead, the transfer of loan assets would be a non-taxable §351 capital contribution between a parent [and its subsidiary [
the transfer of to to to the there would be no basis to recharacterize the loan asset transfer even if no offsetting liabilities were transferred. Instead, the transfer of loan assets would be a non-taxable §351 capital contribution between a parent and its subsidiary [
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NPA
We advised that we did not think that the transfer of loan assets from should be re-characterized as a dividend from to the common parent followed by a capital contribution from the parent to sat there is no reason not to believe the evidence that an offsetting amount of liabilities were transferred with the loan assets and that the loan assets were transferred to while it was still a subsidiary of
Please call Jim Thurston at (415) 744-9201 if you have any questions.
Janus P. Thurston
JAMES P. THURSTON
Special Litigation Assistant

Attachment

cc: Assistant Regional Counsel (TL) (without attachment)